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Preparatory Commission for the International Criminal Court

Working Group on a Relationship Agreement between the United Nations and the International Criminal Court

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Report of the Working Group on a Relationship Agreement between the United Nations and the International Criminal Court

Draft relationship agreement between the United Nations and the International Criminal Court

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Preamble

The United Nations and the International Criminal Court,

Bearing in mind the principles and purposes of the Charter of the United Nations,

Recalling that the Rome Statute of the International Criminal Court reaffirms the purposes and principles of the Charter of the United Nations,

Noting the important role assigned to the International Criminal Court in dealing with the most serious crimes of concern to the international community as a whole, as referred to in the Rome Statute, and which threaten the peace, security and well-being of the world,

Bearing in mind that, in accordance with the Rome Statute, the International Criminal Court is established as an independent permanent institution in relationship with the United Nations system,

Recalling also that, in accordance with article 2 of the Rome Statute, the International Criminal Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to the Rome Statute and thereafter concluded by the President of the Court on its behalf,

Recalling further General Assembly resolution ____ of ____ calling for the conclusion of a relationship agreement between the United Nations and the International Criminal Court,

Noting the responsibilities of the Secretary-General of the United Nations under the provisions of the Rome Statute of the International Criminal Court,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

Taking into account for this purpose the provisions of the Charter of the United Nations and the provisions of the Rome Statute of the International Criminal Court,

Have agreed as follows:

I. General provisions

Article 1
Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

Article 2
Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international

legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court recognizes the responsibilities of the United Nations under the Charter.

3. The United Nations and the Court respect each other's status and mandate.

Article 3
Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

II. Institutional relations

Article 4
Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations where observers are allowed and whenever matters of interest to the Court are under discussion.

2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

3. Subject to the applicable provisions of the Rules of Procedure and Evidence, the United Nations shall have a standing invitation to attend public hearings of the Chambers of the Court that relate to cases of interest to the United Nations.

Article 5
Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning the submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:

(a) The Secretary-General shall:

(i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of paragraphs 1 and 2 of article 123 of the Statute related to the convening by the Secretary-General of review conferences;

(iii) In addition to the requirement provided in paragraph 7 of article 121 of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute;

(b) The Registrar shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation related to pleadings, oral proceedings, judgements and orders, when the Court deems it appropriate;

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute;

(c) The Court shall keep the United Nations informed about proceedings of the Court in cases that involve crimes committed against the personnel of the United Nations or that involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They shall strive, where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information.

Article 6
Reports to the United Nations

The Court may, if it deems it appropriate, submit reports on its activities to the United Nations through the Secretary-General.

Article 7
Agenda items

The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 8
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.

2. The United Nations and the Court agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, the duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;

(b) Cooperate in the interchange of personnel, where appropriate;

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 9
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas, provided that there are cost savings.

Article 10
Conference services and facilities

1. The United Nations agrees that it shall, subject to availability and to any arrangement on costs and expenses, provide for the purposes of the Court such facilities and services as may be required, including for the meetings of the Assembly and of its Bureau, including translation and interpretation services, documentation and conference services. When the United Nations is unable to meet the request of the Court, it shall notify the Court accordingly, giving reasonable notice.

2. The terms and conditions on which any such facilities or services of the United Nations may be provided shall, as appropriate, be the subject of supplementary arrangements.

Article 11
Access to United Nations Headquarters

The United Nations and the Court shall endeavour to facilitate access by the representatives of all States Parties to the Statute and observers in the Assembly, as provided for in paragraph 1 of article 112 of the Statute, to United Nations Headquarters when a meeting of the Assembly is to be held.

Article 12
Laissez-passer

The judges, the Prosecutor, the Deputy Prosecutor, the Registrar and the staff of the Office of the Prosecutor and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General and the Court, to use the laissez-passer of the United Nations as a valid travel document where such use is recognized by States.

Article 13
Financial matters

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements. The Registrar shall inform the Assembly of the making of such arrangements.

2. The United Nations and the Court further agree that the costs and expenses resulting from cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court. The Registrar shall inform the Assembly of the making of such arrangements.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 14
Other agreements concluded by the Court

The United Nations and the Court shall consult, when appropriate, on the registration with the United Nations of agreements concluded by the Court with States or international organizations.

III. Cooperation and judicial assistance

Article 15
General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to paragraph 6 of article 87 of the Statute.

2. The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the Charter and the Statute.

3. In the event that the disclosure of information or documents or the provision of other forms of cooperation would endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.

Article 16
Testimony of the officials of the United Nations

1. If the Court requests the testimony of an official of the United Nations or one of its programmes, funds or agencies, the United Nations undertakes to cooperate with the Court and, if necessary and with due regard to its responsibilities and

competence under the Charter and subject to its rules, shall waive that person's obligation of confidentiality.

2. The Secretary-General may be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court.

Article 17
Cooperation between the Security Council of the United Nations and the Court

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b) of the Statute, a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.

2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.

3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure to cooperate with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

Article 18
Cooperation between the United Nations and the Prosecutor

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with that article.

2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with paragraph 2 of article 15 of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor and the United Nations or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 19
Rules concerning United Nations privileges and immunities

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to the relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the United Nations, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities.

Article 20
Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly, and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

IV. Final provisions

Article 21
Supplementary arrangements for the implementation of the present Agreement

The Secretary-General and the Court may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 22
Settlement of disputes

The United Nations and the Court agree to settle any dispute related to the interpretation or application of the present Agreement by appropriate means.

Article 23
Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

Article 24
Entry into force

The present Agreement shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this _____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.